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RECORDATION NO **16719** FILED 1425

January 12, 1990

JAN 11 1990 - 1 55 PM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Please find enclosed a Lease Agreement dated as of December 19, 1989, between the following parties:

Lessor: Electro-Motive Division
General Motors Corporation
LaGrange, IL 60525

Lessee: Burlington Northern Railroad Co.
Overland Park, KS 66210

The equipment involved in this transaction is listed on Exhibit A.

Please record this document as a primary agreement. The filing fee of \$15 is enclosed. Thank you for your assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

Pat Ward
C. D. Dwyer

LEASE AGREEMENT

RECORDATION NO. **16719** FILED 1425
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INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, made and entered into as of this 19th day of December, 1989, by and between Electro-Motive Division, General Motors Corporation, a Delaware corporation, hereinafter called "Owner", and Burlington Northern Railroad Company, a Delaware Corporation, hereinafter called "User" or "BN",

OWNER AND USER HEREBY AGREE AS FOLLOWS:

1. Daily Rentals: User agrees to rent from Owner on a daily basis for a period not to exceed an average of 90 days for each of the locomotives described in Exhibit A, together with all additions and accessories incorporated therein and/or affixed thereto (the "Locomotives"). As provided in Section 2, rental shall start immediately upon the execution by BN of a "Certificate of Acceptance", in the form of Exhibit II.

User will cause the Locomotives to be kept numbered with the identification numbers thereon at the time of their delivery hereunder and will keep and maintain, plainly, distinctly, permanently and conspicuously marked inside the cab of the Locomotive, in letters not less than one-inch in height, the words "General Motors Corporation, Electro-Motive Division - Owner". User will not place any Locomotive in operation or exercise any control or dominion over the same unless such Locomotives are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. User will not change the identification number of any Locomotive unless and until a statement of the new number to be substituted therefor shall have been filed with Owner and duly filed and deposited by User in all public offices where this Agreement shall have been filed and deposited.

User will not allow the name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership.

2. Rent: This Agreement shall commence with respect to each Locomotive when said Locomotive is delivered and accepted by User and shall continue until this Agreement is terminated by Owner and User with respect to any Locomotive or until the final rental payment with respect to such a Locomotive is made, and rent will commence with respect to each Locomotive on the date of execution of a Certificate of Acceptance thereof, which date is herein called the "Rent Commencement Date" and shall continue until the Locomotives are returned to Owner pursuant to Section 1 hereof. The Daily Rental per Locomotive shall be computed in accordance with the following formula:

$$R = \frac{(X\%) (\$ \text{ Invoice Price of such Locomotive})}{365}$$

where R = the daily rental of a given Locomotive
X = the prime or base rate of interest announced by a majority of the 12 largest U.S. banks on such date

Invoice Price shall be the price determined in accordance with that certain Conditional Purchase Agreement between the parties, dated February 2, 1989 (Conditional Purchase Agreement).

Such rent shall be payable at lease termination with respect to each Locomotive.

User shall not be entitled to any reduction of rent, abatement or setoff counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, reductions, setoffs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of User against Owner or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate or the obligations of User be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of the Locomotive or damage to or loss of possession or use or destruction of such Locomotive from whatever cause and of whatever duration, except as otherwise provided herein. User acknowledges that: Owner has no knowledge or information as to the condition or suitability for User's purpose of the

Locomotives and Owner's decision to enter into this Agreement is made in reliance on User's undertakings herein, including User's express agreement not to assert against Owner any claims, defenses, setoffs or counterclaims it may now or hereafter have against Owner.

3. Warranties and Representations: Owner warrants and incorporates by reference herein the obligations and warranties as described in the Conditional Purchase Agreement. There are no warranties, expressed or implied, made by Owner except the foregoing.
4. Place of Payment of Rent: User shall direct payment of the rent to the following address:

Electro-Motive Division
General Motors Corporation
LaGrange, Illinois 60525
Attn: Assistant Comptroller

5. Recordkeeping; Inspection: User agrees to keep and maintain and make available to Owner such record of User's use, operation, inspection, repairs and maintenance of the Locomotives while in its possession as shall be reasonably required by Owner.

If requested, within five (5) days of the end of the term of this Agreement, User will furnish to Owner a certificate signed by the chief mechanical officer of User setting forth the repairs performed on the Locomotives during the term hereof, and such other information regarding the condition and state of repair of the Locomotives as Owner may reasonably request. Owner, at its sole expense, shall have the right by its agents to enter upon the property of User to inspect the Locomotives and the User's records with respect thereto at such reasonable times as Owner may request during the term of this Agreement.

User shall promptly notify Owner of any occurrence of an event of default as defined in Section 19 hereof or default, specifying such event of default or default and the nature and status thereof.

6. Loss or Destruction: In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use, or, in the reasonable opinion of User, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by User for a period of 30 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), User shall notify Owner of such Casualty Occurrence. User shall pay Owner the rental accrued on any Locomotive suffering a Casualty Occurrence prior to the date of such an occurrence. In addition, the proceeds of any insurance, any condemnation payment and any other payment received by User in respect of a Casualty Occurrence shall be immediately paid to Owner provided, however, that in no event shall Owner receive more than Invoice Price hereunder with respect to any one Locomotive. User agrees that in the event the payments provided in the preceding sentence shall be less than the Invoice Price, User shall pay Owner such difference. Upon receipt of the payments under either of the two preceding sentences, Owner shall give User good and clear title to the Locomotive suffering the Casualty Occurrence.

If Owner and User shall consummate one or more agreements wherein Owner undertakes to perform certain maintenance of the Locomotives at Glendive, Montana (Maintenance Agreements) and there shall be any conflict between the provisions of this Section 6 and such Maintenance Agreements, the provisions of such Maintenance Agreements shall prevail.

7. Indemnity: User agrees to indemnify, protect and hold harmless Owner from and against all losses, damages, injuries, liabilities, claims (including, without limitations, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties, and interest, arising from or caused directly by: (a) User's failure to promptly perform any of its obligations under the provisions of Sections 1, 2, 6, 7, and 17 of this Agreement, or (b) injury to person or property taking place after the Rent Commencement Date and prior to return to the Owner of any specific Locomotive, resulting from or based upon the actual or alleged use, operation,

delivery or transportation of any Locomotive or its location or condition, or (c) inadequacy of any Locomotive, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Owner, either along or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Owner in any such action or actions; provided, however, that (i) Owner shall give User written notice of any such claim or demand, and (ii) User shall not be required to indemnify, protect, hold harmless and defend Owner for any loss, damage, injury, liability, claim, demand or expense to the extent it results from the gross negligence or willful misconduct of Owner or to the extent such arises from Owner's failure to meet any of its problem correction, performance guarantee, or warranty obligations under Section 3 hereunder. The indemnities arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the expiration or termination of this Agreement.

Except as otherwise expressly provided in this Agreement and subject to the same types of limitations set forth in clause (ii) of the first paragraph of this Section 7, User shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the Locomotives.

If Owner and User shall consummate the Maintenance Agreements and there shall be any conflict between the provisions of this Section 7 and such Maintenance Agreements, the provisions of such Maintenance Agreements shall prevail.

8. Compliance With Law; Repair and Maintenance: User shall comply with the FRA, and all other applicable laws, regulations and requirements with respect to use, maintenance and operation of the Locomotives during the term of this Agreement. User shall use the Locomotives only in the manner for which they were designed so as to subject them only to ordinary wear and tear.

User shall at its own cost and expense, maintain and service the Locomotives in accordance with prudent industry practice including testing and repair of the Locomotives so that the Locomotives will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), and (b) in compliance with any and all applicable laws and regulations. In no event shall the Locomotives be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by User for similar equipment. Any parts installed or replacements made by User upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Owner, without cost or expense to Owner; provided, however, User may remove from the Locomotives any (a) communications equipment, (b) train control, (c) end of train telemetry, and (d) recording devices, which User paid for and installed but only if such removal may be accomplished without damage to the Locomotives.

If Owner and User shall consummate the Maintenance Agreements and there shall be any conflict between the provisions of this Section 8 and such Maintenance Agreements, the provisions of such Maintenance Agreements shall prevail.

9. Assignment by User: User shall not assign or sublet its interest, or any parts thereof, under this Agreement, or permit the use or operation of the Locomotives subject to this Agreement by any other person, firm or corporation, other than wholly owned subsidiaries, without the prior written consent of Owner. Owner expressly consents to incidental operation and use on railroads other than Lessee's.
10. Unless otherwise specifically provided, any notices to be given under this Agreement or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Owner to User shall be sent to:

System Chief Mechanical Officer
Burlington Northern Railroad Company
9401 Indian Creek Parkway
Building 40 - 16th Floor
Overland Park, Kansas 66210

or to such other address as User may from time to time indicate by written notice to Owner.

(b) Notices from User to Owner shall be sent to:

Electro-Motive Division
General Motors Corporation
LaGrange, Illinois 60525
Attention: Keith McCanless
Manager of Finance & Leasing

11. Quiet Enjoyment: So long as User makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, User shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by Owner or by any party lawfully claiming by or through Owner.
12. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof.
13. Protection of Owner's Title: Owner may, at its option, cause this Agreement to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act or other places within or without the United States as Owner may reasonably request for the protection of its title. User will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments as reasonably requested by Owner, for the purpose of protecting Owner's title to the Locomotives.
14. Taxes: Owner shall bear the cost of any and all import duties and import taxes as provided in the Conditional Purchase Agreement, User, or Owner at User's expense, shall report, pay and discharge when due all license and registration fees, assessments, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Locomotives pursuant to this Agreement, including without limitation amounts payable under Sections 2, 6 and 10, hereof and other taxes (excluding any tax measured by Owner's net income), together with any

penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Owner or User.

15. Performance Obligations of User by Owner: In the event that the User shall fail duly and promptly to perform any of its obligations under the provisions of this Agreement, Owner may, at its option, perform the same for the account of User without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by Owner in such performance, together with interest at the lesser of 1-1/2 percent per month or the highest amount allowed by law thereon until paid by the User to Owner, shall be payable by the User upon demand as additional rent hereunder.
16. Further Assurance: User shall execute and deliver to Owner, upon Owner's request such instruments and assurances as Owner deems necessary or advisable for the confirmation or perfection of this Agreement and Owner's rights hereunder.
17. User's Covenants: User will: (a) defend at User's own cost any action, proceeding or claim affecting the Locomotives except as stated in Section 7; (b) do everything necessary or expedient to preserve or perfect the Owner's interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or, without the prior written consent of Owner and notwithstanding Owner's claim to proceeds, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Subsection (e) of this Section; (d) agree that Owner may enter upon User's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable notice to inspect the Locomotives; and (e) except as provided in Section 9 of this Agreement, not permit the use of the Locomotives by any other party, without Owner's consent to be granted in its sole discretion.
18. Default: An event of default shall occur if: (a) User fails to pay when due any installment of rent and such failure continues for a period of 15 days; (b) User shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure continues uncured for fifteen (15) days after written notice thereof to User by Owner; (c) User ceases

doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceedings, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action looking to its dissolution or liquidation; (d) within sixty (60) days after the commencement of any proceedings against User seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 60 days after the appointment without User's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated; or (e) User attempts to remove, sell, transfer, encumber, part with possession or sublet any of the Locomotives in a manner prohibited hereunder without the consent of Owner.

Upon the occurrence of an event of default, Owner, at its option, may: (a) declare all sums due and to become due hereunder immediately due and payable; (b) proceed by appropriate court action or action or other proceedings either at law or equity to enforce performance by the User of any and all covenants of this Agreement and to recover damages for the breach thereof; (c) demand that User deliver the Locomotives forthwith to Owner at User's expense at such place as Owner may designate on User's Line; and (d) Owner and/or its agents may, without notice or liability or legal process, enter into any premises of or under control or jurisdiction of User or any agent of User where any Locomotive may be or by Owner is believed to be, and retake such Locomotive, disconnecting and separating all thereof from any other property and using all force necessary or permitted by applicable law so to do, User hereby expressly waives all further rights to possession of the Locomotives and all claims for damages suffered through or loss caused by such retaking. If any statute governing any proceedings hereunder specifies the amount of Owner's deficiency or other damages for breach of this Agreement by the User, Owner shall be entitled to provide as and for

damages for the breach an amount equal to that allowed under such statute in lieu of any other damages for breach of this Agreement. The provisions of this paragraph shall be without prejudice to any rights given to Owner by such statute to provide for any amounts allowed thereby. Should any proceedings be instituted by or against Owner for monies due to Owner hereunder and/or for possession of any Locomotive or for any other relief, User shall pay a reasonable sum as attorneys' fees. The remedies in this Agreement provided in favor of Owner shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. User hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. User hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the User or on its behalf. Owner and the User agree that Owner shall be entitled to all rights (such rights being fundamental to the willingness of Owner to enter into this Agreement) provided for in the Bankruptcy Code or of any other bankruptcy act, so that Owner shall have the right to take possession of any or all of the Locomotives upon any event of default under this Agreement regardless of whether the User is in reorganization. No failure by Owner to exercise, and no delay by Owner in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by Owner preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

19. Choice of Law: This Agreement shall be governed in all respects by the Law of Illinois.
20. Miscellaneous: Except as otherwise provided in the Conditional Purchase Agreement, all transportation charges shall be borne by User. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. This Agreement is irrevocable for the full term hereof and for the aggregate rental herein reserved. User admits the receipt of a true copy of this Agreement.

21. Conditional Purchase Agreement: Except as stated in this Section 21, nothing herein shall be deemed to alter, amend or affect the respective rights and obligations of the parties under the Conditional Purchase Agreement. The lease of the Locomotives specified in Exhibit A shall not disqualify such Locomotives for purposes of being "new" under the Conditional Purchase Agreement. Further, Owner commits to transfer title to the Locomotives to the User's designee upon payment of the Invoice Price and any rentals due under this Lease Agreement, and to execute in recordable form the Lease Agreement Termination as attached as Exhibit B hereto.

Date: Dec 19, 1989

Electro-Motive Division
General Motors Corporation

Attest: [Signature]

By: [Signature]
Title: Vice President & General Manager
of Electro-Motive Division

Date: December 19, 1989

Burlington Northern Railroad Company

Attest: B J Ryan

By: Joseph R. Galassi
Title: Executive Vice President Operations

Exhibit A

Road
Numbers

9200	9225
9201	9226
9202	9227
9203	9228
9204	9229
9205	9230
9206	9231
9207	9232
9208	9233
9209	9234
9210	9235
9211	9236
9212	9237
9213	9238
9214	9239
9215	9240
9216	9241
9217	9242
9218	9243
9219	9244
9220	9245
9221	9246
9222	9247
9223	9248
9224	9249

State of Illinois)
County of Cook) ss.

On this 19th day of December, 1989, before me personally appeared John W. Jarrell, to me personally known, who, being by me duly sworn, did say that he is a Vice President and General Manager of Electro-Motive Division, General Motors Corporation, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

My commission expires:

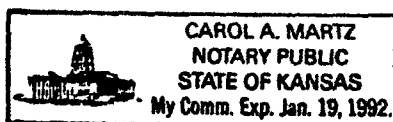
April 17, 1992

Juanita Acantilado
Notary Public



State of Kansas)
County of Johnson) ss.

On this 19th day of December, 1989, before me personally appeared JR Halasie, to me personally known, who, being by me duly sworn, did say that he is a Executive Vice President of Burlington Northern Railroad Company, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



My commission expires:

1-19-92

Carol A. Martz
Notary Public

EXHIBIT II
CERTIFICATE OF ACCEPTANCE

Electro-Motive Division, General Motors Corporation, has demonstrated to Burlington Northern Railroad Company that Locomotive No. _____ appears to have met all the agreed upon functional and operational tests and conforms to Specification 8128 and Amendment 8128-3, as modified by Agenda 887033 and the subsequent mutually agreed upon changes thereto, all as listed under Section 1 of that certain Conditional Purchase Agreement between Electro-Motive Division, General Motors Corporation and Burlington Northern Railroad Company, dated February 2, 1989, providing for the sale of SD60M locomotives.

This locomotive is hereby accepted by Burlington Northern Railroad Company pursuant to the terms of the Lease Agreement to which this Exhibit is appended.

ELECTRO-MOTIVE DIVISION
GENERAL MOTORS CORPORATION

Title

Date

BURLINGTON NORTHERN RAILROAD COMPANY

Title

Date